

873—4.8(86) Filing of notice.

4.8(1) A contested case is commenced by filing the original notice and petition with the industrial commissioner. No action shall be taken by the industrial commissioner on any contested case against an adverse party unless the adverse party has answered or unless it can be shown by proper proof that the adverse party has been properly served. The original notice and petition if required by 4.6(85,86,17A) shall be accompanied by proof that the petitioner has deposited copies of such documents with the U.S. post office for delivery by certified mail, return receipt requested, upon the respondent or has submitted such copies to a proper person for delivery of personal service as in civil actions.

4.8(2) Filing fee.

a. On or after July 1, 1988, for all original notices and petitions for arbitration or review-reopening seeking weekly benefits filed on account of each injury, gradual injury, occupational disease or occupational hearing loss alleged by an employee, a filing fee of \$65 shall be paid at the time of filing. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits, Iowa Code section 85.28; determination of dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; second injury fund, Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, Iowa Code section 85.70; approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section 85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; and determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21. An amendment that is filed on or after July 1, 1988, which alleges an additional injury date will be treated like an original notice and petition. No filing fee is due when an amendment corrects an erroneous injury date.

b. One filing fee of \$65 shall be required for as many original notices and petitions as are filed on the same day on account of one employee against a single alleged employer or against entities alleged to be employers in the alternative or alleged to be dual employers. If filing fees have been overpaid, the amount overpaid shall be refunded to the party who made the overpayment.

c. One filing fee of \$65 shall be required for as many original notices and petitions as are filed on the same day against multiple alleged employers on account of one employee; provided, however, that to qualify for one filing fee all original notices and petitions against all employers must involve an identity of body parts, that is, must all relate to the same scheduled member or members or all relate to the body as a whole or all relate to the same scheduled member or members and body as a whole.

d. If original notices and petitions filed on account of one employee are not filed on the same day, a \$65 filing fee is required for each original notice and petition even though it would have qualified for a shared filing fee if filed on the same day as other original notices and petitions.

e. If the correct filing fee or fees are not paid at the time of filing of the original notice and petition, the industrial commissioner shall enter an order requiring payment of the correct filing fee or fees. If the required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 4.36(86). If correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.

If no filing fee is paid at the time of filing of the original notice and petition, the industrial commissioner shall return the original notice and petition to the party filing it. Filing an original notice and petition without paying the fee shall not toll the statute of limitations. Tendering an amount less than \$65 will be considered failure to pay a filing fee.

f. The filing fee may be taxed as a cost to the losing party in the case. If the filing fee would impose an undue hardship or be unjust in the circumstances for the losing party, the filing fee may be taxed as costs to the winning party in the case. If an original notice and petition is erroneously accepted for filing without payment of the correct filing fee or fees, any unpaid fees may be taxed as costs. See rule 4.33(86).

g. The filing fee shall be paid at the same time the petition is filed. Checks should be made payable to the "Iowa Division of Industrial Services." If the payment of the filing fee is made by an insufficient

funds check or a check on which payment is stopped or a check on which payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See 4.8(2)“e.” One check may be submitted for payment of more than one filing fee if more than one filing fee is due from a petitioner for cases filed on account of an employee. Separate checks must be submitted for each petitioner’s case or cases.

h. The industrial commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the industrial commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the industrial commissioner and shall include an affidavit signed by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the industrial commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See 4.8(2)“e.”

i. Rescinded IAB 1/29/97, effective 3/5/97.

This rule is intended to implement Iowa Code section 17A.12.